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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,882	07/16/2003	Alden Ozment	US001/000US-U	9095
24350	7590	06/02/2005		
STITES & HARBISON, PLLC 400 W MARKET ST SUITE 1800 LOUISVILLE, KY 40202-3352			EXAMINER GANAY, STEVEN J	
			ART UNIT 3752	PAPER NUMBER

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/620,882	OZMENT, ALDEN
	Examiner Steven J. Ganey	Art Unit 3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 16 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11, 13 and 14 is/are rejected.
- 7) Claim(s) 12 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/4/03 &amp; 3/26/04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 3 is objected to because of the following informalities: In line 2, the semi-colon “ ; “ after the word “area” should be replaced with a period -- . --. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8, 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2, the phrase, “said portion of the confined area” lacks antecedent basis and is indefinite since “a portion” and “confined area” have not been previously recited.

In claim 2, line 1, “the area” lacks antecedent basis. Correction of the antecedent basis problem in claim 1 should correct this issue.

In claim 3, “a portion of the confined area” raises double inclusion issues and antecedent basis problems since “said portion” has already been recited in claim 1 and “the confined area” has not been properly recited in claim 1.

In claim 7, line 1, "the sealed portion" lacks antecedent basis and it appears that it should depend from claim 3, however, note that "said dispenser" also requires claim dependency from claim 5.

In claim 13, line 6, the recitation of "for dispensing expanded foam" is indefinite, since it is not clearly defined how this expanded foam is formed. It appears that the structural cooperative relationship between the discharge tube, the eductor and the gas intake nipple is missing, since it is the eduction of the gas into the eductor of the discharge tube from the interior of the casing which expands the foam before being discharged from the egress end of the discharge tube.

In claim 13, line 7, "said discharge tube bore" lacks antecedent basis. Such language should be provided in claim 13 to provide proper antecedent basis.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grisdale et al in view of Terry.

Grisdale et al discloses a method of extinguishing a fire in confined poorly ventilated area comprising the steps of providing at least one ingress point, proportioning a foam concentrate into water, see Fig. 4, forming a foam fire suppressant by introducing a gas under pressure to

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expand the foam concentrate and water mixture, see Fig. 2, and introducing the expanded foam through the ingress point, except for the gas being nitrogen. Terry discloses a method of extinguishing fires in confined poorly ventilated areas using a foaming mud cement expanded by nitrogen gas, see col. 3, lines 29-34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use nitrogen gas in the apparatus of Grisdale et al, instead of compressed air, since Terry teaches that such gases are common and are equivalents and the apparatus of Grisdale et al would perform equally as well with nitrogen or compressed air.

6. Claims 1 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter.

Hunter discloses a device for expanding and dispensing fire suppressant foam comprising proportioning a foam concentrate 38 with water 12 and introducing nitrogen gas 10 to expand the foam/water mixture, note concentrations 2, line 61, except for the steps of providing an ingress point into the confined area. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the apparatus of Hunter to extinguish fires in confined areas or poorly ventilated areas and to provide an ingress point, since it is well known in the fire fighting art that in order to reach a fire to extinguish it, ingress points are made to introduce the fire fighting suppressant to the area where the fire originated.

***Allowable Subject Matter***

7. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claims 2-8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
9. Claims 13 and 14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sundholm and Smagac '995 disclose apparatuses that use nitrogen to form an expanded fire fighting foam. Jamison discloses a method of using foam to fight mine fires.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

sjg

5/30/05



**STEVEN J. GANEY  
PRIMARY EXAMINER**

*5/30/05*